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KERALA GAZETTE

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NOTIFICATION

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Dated, Trivandrum, 10th December, 1962|
19th Agrahayana, 1884 (Saka)

The following Ordinance promulgated by the Governor on the 10th December, 1962, is hereby published for general information.

By order of the Governor,

P. SANKARAN ELAYATH,
Law Secretary.

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ORDINANCE No. 8 OF 1962

THE KERALA TENANTS AND KUDIKIDAPPUKARS PROTECTION ORDINANCE, 1962.

PROMULGATED BY THE GOVERNOR OF KERALA IN THE THIRTEENTH YEAR OF THE REPUBLIC OF INDIA.

An Ordinance to provide for the temporary protection of tenants and kudikidappukars in the State of Kerala.

Preamble.—WHEREAS the Kerala Agrarian Relations Act, 1960, has been declared unconstitutional in its application to the major portion of the lands in the State of Kerala;

AND WHEREAS the Legislative Assembly of the State of Kerala is not in session, and the Governor of Kerala is satisfied that circumstances exist which render it necessary for him to take immediate action to provide for the temporary protection of tenants and kudikidappukars in the State of Kerala pending the enactment of a comprehensive legislation relating to tenancy and agrarian reforms for the State of Kerala;

NOW, THEREFORE, in exercise of the powers conferred by clause (1) of article 213 of the Constitution of India, the Governor is pleased to promulgate the following Ordinance:—

1. *Short title, extent, commencement and duration.*—(1) This Ordinance may be called the Kerala Tenants and Kudikidappukars Protection Ordinance, 1962.

(2) It extends to the whole of the State of Kerala.

(3) It shall come into force at once and shall cease to have effect on the 31st day of December, 1963.

(4) Upon the expiry of this Ordinance, the provisions of section 4 of the Interpretation and General Clauses Act, 1125 (Act VII of 1125), shall apply as if this Ordinance had then been repealed by an Act of the Kerala State Legislature.

2. *Temporary stay of enforcement of rights, privileges, etc., under certain enactments.*—During the period of operation of this Ordinance, no suit or other proceedings—

(i) for the recognition or enforcement of any right, privilege, obligation or liability acquired, accrued or incurred under the Kerala Agrarian Relations Act, 1960 (Act 4 of 1961), or the Kerala Ryotwari Tenants and Kudikidappukars Protection Act, 1962 (Act 18 of 1962), or the Madras Cultivating Tenants (Payment of Fair Rent) Act, 1956 (Act XXIV of 1956); or

(ii) for the fixation of fair rent under the Malabar Tenancy Act, 1929 (Act XIV of 1930),

shall be instituted or continued in or before any court, tribunal or other authority.

3. *Definitions.*—In this Ordinance, unless the context otherwise requires,—

(1) "Cochin" means the area comprising—

(i) the portion of the State of Kerala which before the first day of July, 1949, formed the State of Cochin, less the enclaves absorbed in the Malabar district under the Provinces and States (Absorption of Enclaves) Order, 1950; and

(ii) the enclaves which formed part of the Malabar district absorbed in the State of Travancore-Cochin under the said Order;

(2) "customary dues" means onakazhcha, utsavakazhcha, perunnalkazhcha or aradiantharam or the like, due annually or periodically on specific dates or at periodical intervals, or on the happening of any event or on the occasion of any festival, specified or not, but does not include rent or michavaram specified as such in the contract of tenancy;

(3) "eviction" means the recovery of possession of land from a tenant or kudikidappukaran;

(4) "garden" means land used principally for growing cocoanut trees, arecanut trees or both or used principally for growing pepper vine;

(5) "holding" means a parcel or parcels of land held under a single transaction by a tenant from a landlord and shall include any portion of a holding as above defined which the landlord and the tenant have agreed or are bound to treat as a separate holding;

(6) "hut" means any dwelling house which has a value not exceeding four hundred rupees or the monthly rent of which does not exceed four rupees;

(7) "intermediary" means any person who, not being a landowner or mortgagee, has an interest in the land and is entitled, by reason of such interest, to possession thereof, but has transferred such possession to any other person otherwise than by way of mortgage;

(8) "kanam" means the transfer for consideration in money or in kind or in both, by a landlord of an interest in specific immovable property to another for the latter's enjoyment, whether described in the document evidencing the transaction as kanam or kanapattom, the incidents of which transfer include—

(a) a right in the transferee to hold the said property liable for the consideration paid by him or due to him;

(b) the liability of the transferor to pay to the transferee interest on such consideration unless otherwise agreed to by the parties; and

(c) payment of michavaram, or customary dues or renewal on the expiry of any specified period,

and in areas in the State of Kerala other than Malabar, includes

such transfer of interest in specific immovable property which is described in the document evidencing the transaction as Otti, Karipanayam, Panayam, Nerpanayam, or by any other name and which has the incidents specified in items (a), and (b) above and also the following incidents:—

(i) renewal on the expiry of any specified period; and
(ii) payment of customary dues:

Provided that kanapattom or any other demise governed by the Kanam Tenancy Act, 1955, shall not be deemed to be a kanam.

Explanation.—For the purposes of this clause, in a case where there has been no stipulation in the document evidencing the transaction for renewal on the expiry of any specified period, but there has been a renewal or payment of renewal fees, it shall be deemed that there had been a provision for such renewal in the document;

(9) "kanam-kuzhikanam" means and includes a transfer by a landlord to another (called the 'kanam-kuzhikanamdar') of garden lands or of other lands or of both, with the fruit-bearing trees, if any, standing thereon at the time of the transfer for the enjoyment of those trees and for the purpose of planting such fruit-bearing trees thereon, the incidents of which transfer include—

(a) a right in the transferee to hold the said lands liable for the consideration paid by him or due to him which consideration is called 'kanartham'; and

(b) the liability of the transferor to pay to the transferee interest on the kanartham unless otherwise agreed to by the parties;

(10) "kudikidappukaran" means a person who has no homestead or land, either as owner or as tenant in possession, to erect a homestead, and—

(i) who has been permitted with or without an obligation to pay rent by a person in lawful possession of any land to have the use and occupation of a portion of such land for the purpose of erecting a homestead, or

(ii) who has been permitted by a person in lawful possession of any land to occupy, with or without an obligation to pay rent, a hut belonging to such person and situate in the said land,

but otherwise has no interest in the land; and

"kudikidappu" means the land and the homestead or the hut so permitted to be erected or occupied together with the easements attached thereto:

Provided that a person shall not be deemed to be a kudikidappukaran if the aforesaid permission was granted after the 11th day of April, 1957, by a mortgagee in possession or by a tenant who had no fixity of tenure at the time of granting the permission:

Provided further that a person shall not be deemed to be a kudikidappukaran if the aforesaid permission was granted in respect of any hut not belonging to him and situated—

(a) in any land principally planted with tea, coffee, rubber, cardamom or cinnamon; or

(b) in any area of land which is appurtenant to a mill, factory or workshop,

and in connection with the employment of such person in the land so planted or, as the case may be, in the mill, factory or workshop, unless he was, immediately before the 15th day of February, 1961, entitled to the rights of a kudikidappukaran or the holder of a protected ulkudi or kudikidappu under any law.

Explanation I.—Any person who was in occupation of a kudikidappu on the 11th day of April, 1957, and who continued to be in such occupation at the commencement of this Ordinance shall be deemed to be in occupation of such kudikidappu with permission as required under this clause.

Explanation II.—Where any kudikidappukaran secures any mortgage with possession over the land in which the kudikidappu is situate, his kudikidappu right shall revive on the redemption of the mortgage, provided that he has at the time of the redemption no homestead or land, either as owner or as tenant in possession, to erect a homestead;

(11) "kudiyiruppu" means a holding or part of a holding consisting of the site of any residential building, the site or sites of other buildings appurtenant thereto, such other lands as are necessary for the convenient enjoyment of such residential building and easements attached thereto, but does not include a kudikidappu;

(12) "kuzhikanam" means and includes a transfer by a landlord to another (called the kuzhikanamdar) of garden lands or of other lands or of both, with the fruit-bearing trees, if any, standing thereon at the time of the transfer, for the enjoyment of those trees and for the purpose of planting such fruit-bearing trees thereon;

(13) "landlord" means a person under whom a tenant holds and to whom he is liable to pay rent;

(14) "licensee" means any person who is in occupation of any nilam belonging to another and who, under any local custom or usage or under an agreement, cultivates that nilam with paddy for a fixed remuneration and with the risk of cultivation, but does not include a person who so cultivates the nilam of another merely as an agent or servant.

Explanation.—Notwithstanding anything in the Indian Evidence Act, 1872, or in any other law for the time being in force, a person, though he is described as an agent or servant in a document evidencing the contract for the cultivation of any nilam, may plead, adduce evidence and prove that he is a licensee;

(15) "Malabar" means the Malabar district referred to in sub-section (2) of section 5 of the States Reorganisation Act, 1956. (Central Act 37 of 1956);

(16) "michavaram" means whatever is agreed by a kanamdar to be paid periodically as residual rent, in money or in kind or in both to, or on behalf of, the landlord, but does not include customary dues;

(17) "mulgeni" means a tenancy in perpetuity at a fixed invariable rent created in favour of a person called the mulgenidar;

(18) "nilam" means land adapted for the cultivation of paddy;

(19) "odacharthu" means an agreement for cutting bamboos in Malabar;

(20) "parmba" means dry land on which perennial cultivation exists, but shall not include a garden;

(21) "private forests" means forests, other than those belonging to the Government, to which the Madras Preservation of Private Forests Act, 1949, applies, but excluding—

(i) areas which are waste or tharisu lands not being enclaves within a wooded area;

(ii) areas which are gardens or parambas or are planted with jack, mango, orange, cashew or such other fruit-bearing trees;

(iii) areas which are nilams or are cultivated with any agricultural crop; and

(iv) areas principally planted with tea, coffee, rubber, cardamom or cinnamon;

(22) "punam or kumri cultivation" means fugitive or intermittent cultivation of paddy on tharisu lands in Malabar;

(23) "punam or kumri cultivator" means a person who has raised crops by punam or kumri cultivation in any year between 1953 and 1959 and, where there are successive cultivators in respect of the same land, the cultivator who raised crops last by such cultivation during the said period;

(24) "rent" means whatever is lawfully payable in money or in kind or in both by a person permitted to have the use and occupation of any land to the person so permitting, and includes michavaram, but does not include customary dues;

(25) (i) "tenant" means any person who has paid or has agreed to pay rent or other consideration, for his being allowed by another, to possess and to enjoy the land of the latter, and includes—

(a) an intermediary;

(b) a verumpattomdar of any description;.

(c) a kanamdar;

(d) a kanam-kuzhikanamdar;

(e) a kuzhikanamdar;

(f) a punam or kumri cultivator;

(g) a licensee in Kuttanad taluk;

(h) a varomdar;

(i) an odacharthudar or a person claiming under him, who was actually cultivating on the 11th day of April, 1957 and is continuing to cultivate at the commencement of this Ordinance, the land or any portion of the land to which the odacharthu relates, in respect of the land or the portion of the land so cultivated;

(j) a mortgagee with possession of immovable property situate in Cochin, where—

(i) the property comprised in the mortgage consists of agricultural lands other than lands planted with rubber, coffee, tea or cashew; and

(ii) the interest on the mortgage amount is less than 40 per cent of the total rent fixed in the mortgage document;

(k) a mortgagee with possession of immovable property situate in Cochin, where the mortgage was executed on or after the first day of Chingam, 1111, and the property comprised in the mortgage consists of agricultural lands, and such property was outstanding with the mortgagee or his predecessor-in-interest on verumpattom immediately prior to the mortgage with possession;

(l) the holder of a kudiyiruppu;

(m) a vechupakuthidar;

(n) the holder of a chalgeni lease;

(o) a mulgenidar;

(p) the holder of a vaidageni lease; and

(q) a person holding under a transaction described in the document evidencing it as Bhogya, Otti, Nattotti, Arwar, Illidarwar or Krithasartha Illidarwar, but not being a usufructuary mortgage as defined in the Transfer of Property Act, 1882 (Central Act 4 of 1882),

but shall not include a person holding land under a transaction known as Irakkipanayam.

Explanation I.—Where in a document a person is described as a 'Sambalapattomdar', 'Sambalachittudar' or 'Coolipattomdar' in respect of any paddy land situate in the Palghat district, he shall be presumed to be a tenant:

Provided that such presumption shall stand rebutted if it is proved that the 'Sambalapattomdar', 'Sambalachittudar' or 'Coolipattomdar' has not undertaken any risk of cultivation,

Explanation II.—For the purposes of this sub-clause, any person who, on the 11th day of April, 1957, was continuously in occupation of the land of another situate in Malabar, for not less than two years, *bona fide* believing himself to be a tenant and continued to be in occupation of such land at the commencement of this Ordinance, shall be deemed to be a tenant.

Explanation III.—For the purposes of this sub-clause, 'holder of a chalgeni lease' means a lessee or sub-lessee of specific immovable property situate in the taluk of Hosdrug or Kasaragod in the district of Cannanore, who has contracted, either expressly or impliedly, to hold the same under a lease, whether for a specified period or not.

Explanation IV.—For the purposes of this sub-clause, any person who, by virtue of the provisions of section 6 of the Kerala Stay of Eviction Proceedings Act, 1957, was entitled to cultivate any nilam after the 11th day of April, 1957, and was cultivating the nilam at the commencement of this Ordinance, shall be deemed to be a varomdar, notwithstanding the expiry of the term fixed under the varom arrangement.

Explanation V.—For the purposes of this sub-clause, 'vaidageni lease' means a lease for a term of years;

(ii) "cultivating tenant" means a tenant who actually cultivates the land comprised in his holding.

Explanation.—Where a tenant cultivates only a portion of the land comprised in a holding, he shall be deemed to be the cultivating tenant in respect of that portion;

(26) "tharisu" means cultivable land which is not a nilam, garden, paramba or palliyal land;

(27) "varom" means an arrangement between the varomdar and the owner or other person in lawful possession of any nilam for the cultivation of paddy and sharing of the paddy produce, and includes the arrangements known as pathivarom, pankuvarom, or pankupattom;

(28) "varomdar" means a person who cultivates under a varom arrangement;

(29) "vechupakuthy" means a transaction whereunder a landowner transfers the possession of land to another (called the vechupakuthidar) with the following stipulations:—

(i) the vechupakuthidar shall improve the land by planting within a specified period;

(ii) at the end of the period so specified—

(a) the land shall be partitioned between the landowner and the vechupakuthidar in a specified proportion;

(b) upon such partition, all the rights of either party over the portion of the land set apart for the other shall stand transferred to and vest in the other; and

(iii) during the period between the transfer of the land and the partition thereof the vechupakuthidar shall pay to the landowner such rent as may be specified;

(30) (i) "verumpattomdar" means a lessee or sub-lessee of immovable property, whether called verumpattomdar, or venpattomdar, who has expressly or impliedly contracted to hold the same under a lease with or without security for rent, and includes a Tharikuthukaran in the Palghat district, but does not include a kanamdar, kanamkuzhikanamdar, or kuzhikanamdar;

(ii) "customary verumpattomdar" means any verumpattomdar who, before the commencement of the Malabar Tenancy (Amendment) Act, 1951, was entitled, by the custom of the locality in which the land was situated, to possession of the said land for a definite period of years and for whose continuance thereon after the termination of that period, for a further period, a renewal fee had to be paid to the landlord as an incident of the tenure.

4. *Exemptions.*—Nothing in this Ordinance shall apply to—

(i) leases of land or of buildings or of both belonging to or vested in the Government of Kerala or the Government of any other State in India or the Government of India or a local authority or any other authority notified by the Government in this behalf:

Provided that leases over lands escheated to the Government shall not be deemed to be leases of land belonging to or vested in the Government, if such leases subsisted at the time of the escheat and continued to be in force at the commencement of this Ordinance:

Provided further that, in respect of leases of kandukrishi lands, the provisions of section 5 shall apply to suits or other proceedings for eviction by any landlord other than the Government.

Explanation.—For the purposes of this clause, "kandukrishi land" means land covered by the Kandukrishi Proclamation, 1124, and includes kandukrishi pattom land and kandukrishi thanathu land; or

(ii) leases of buildings including a house, shop or warehouse, and the site thereof, with the land, if any, appurtenant thereto.

Explanation.—Permission given to a kudikidappukaran to occupy a hut shall not be deemed to be a lease of building for the purposes of this clause; or

(iii) leases of land or of buildings or of both specifically granted for industrial or commercial purposes; or

(iv) tenancies of land or of buildings or of both granted the Administrator-General or the Official Trustee or an

Official Receiver or officer appointed by a court under the provisions of any law or by any person holding under or deriving title from any of the officers aforesaid; or

(v) tenancies in respect of land or of buildings or of both created by mortgagees in possession or by persons deriving title from such mortgagees:

Provided that nothing in this clause shall apply to a cultivating tenant holding land in the taluk of Hosdrug or Kasaragod in the district of Cannanore under a lease granted before the 15th day of February, 1961, by a usufructuary mortgagee as defined in the Transfer of Property Act, 1882; or

(vi) tenancies in respect of land or of buildings or of both created by persons holding only life interest or other limited interest in the land or in the buildings or in both.

Explanation.—For the purposes of this clause, a Sthanee or trustee or owner of any temple, mosque, church or other place of public religious worship or of any other public religious or charitable institution or endowment shall not be deemed to be a person having only life interest or other limited interest in ownership:

Provided that the provisions of section 5 shall apply to tenancies falling under clauses (v) and (vi) so long as the mortgage, or, as the case may be, the life interest or other limited interest subsists; or

(vii) leases of private forests:

Provided that nothing in clauses (i) to (vii) shall affect the rights of persons who were entitled to fixity of tenure under the Malabar Tenancy Act, 1929, or under the Cochin Verumpattomdars Act, VIII of 1118 or section 7 of the Hindu Succession Act, 1956; or

(viii) lands transferred for felling trees; or

(ix) any transaction relating only to the usufruct of trees.

5. *Stay of eviction of tenants and kudikidappukars.*—Notwithstanding anything to the contrary contained in any other law for the time being in force, or in any custom, usage or contract, or in any decree or order of court, with effect on and from the commencement of this Ordinance, no suit or other proceedings for eviction of a tenant from his holding or of a kudikidappukaran from his kudikidappu shall lie in any court, and all suits, proceedings in execution of decrees or orders and other proceedings pending in the courts at the commencement of this Ordinance for such eviction shall be stayed.

6. *Stay of suits and proceedings for recovery of arrears of rent accrued due before the 15th February, 1961.*—(1) Notwithstanding anything to the contrary contained in any other law for the time being in force, or in any custom, usage or contract, or in any decree or order of court, but subject to the provisions of this section, no suit or other proceedings for the

recovery of arrears of rent which accrued due from a tenant before the 15th day of February, 1961, shall lie in any court after the commencement of this Ordinance, and all suits, proceedings in execution of decrees or orders and other proceedings pending in the courts at such commencement for recovery of arrears of such rent shall be stayed.

(2) Notwithstanding anything contained in sub-section (1), a tenant shall,—

(i) where arrears of rent accrued due before the 11th day of April, 1957, are outstanding, pay to the landlord or deposit in court for payment to the landlord, on or before the 28th day of February, 1963, an amount equal to one year's rent fixed under the contract of tenancy or, where fair rent has been fixed in respect of the holding under any law in force immediately before the 15th day of February, 1961, such fair rent for one year:

Provided that where such arrears of rent are less than the contract rent or such fair rent for one year, the amount to be paid or deposited shall be only the actual rent in arrears;

(ii) where arrears of rent accrued due on or after the 11th day of April, 1957, and before the 15th day of February, 1961, are outstanding, pay to the landlord or deposit in court for payment to the landlord, an amount equal to 75 per cent of such arrears of rent calculated at the rate fixed under the contract of tenancy or, where fair rent has been fixed in respect of the holding under any law in force immediately before the 15th day of February, 1961, at the rate of such fair rent, in two equal instalments as shown below:—

(a) the first instalment consisting of one-half of the amount aforesaid shall be paid or deposited on or before the 28th day of February, 1963; and

(b) the second instalment consisting of the other half of the amount shall be paid or deposited on or before the 15th day of August, 1963:

Provided that where a tenant has paid after the 15th day of February, 1961, any amount towards the arrears of rent referred to in clause (i) or clause (ii), such amount shall be deducted from the amount to be paid or deposited under that clause, and it shall be sufficient if the tenant pays or deposits the balance, if any, after such deduction.

Explanation.—Where any amount has been paid after the 15th day of February, 1961, towards the arrears of rent referred to in clause (ii), such amount shall be deducted from the amount to be paid or deposited in the first instalment and, where the amount so paid exceeds the amount to be paid or deposited in the first instalment, such excess shall be deducted from the amount to be paid or deposited in the second instalment.

(3) Notice of any deposit made under sub-section (2) shall be given to the landlord by the court. and the cost of the

notice shall be paid by the tenant so depositing the rent, and the landlord shall be at liberty to withdraw such amount under the orders of the court.

(4) The deposit referred to in sub-section (2) shall be made in the court having jurisdiction under the Code of Civil Procedure, 1908, to entertain a suit for the possession of the holding or part thereof to which the arrears relate.

(5) Where a tenant fails to make any payment or deposit as required under sub-section (2), within the period specified therefor in that sub-section, the provisions of sub-section (1) shall cease to apply to suits and other proceedings for recovery of arrears of rent due from him.

7. *Limitation.*—In computing the period of limitation for the institution of suits or proceedings prohibited or stayed under this Ordinance, the time during which such suits or proceedings were prohibited or stayed under this Ordinance and under any of the following enactments, namely:—

(i) the Kerala Stay of Eviction Proceedings Act, 1957;

(ii) the Kerala Agrarian Relations Act, 1960; and

(iii) the Kerala Ryotwari Tenants and Kudikidappukars Protection Act, 1962,

shall be excluded.

V. V. GIRI,
GOVERNOR.